

MT LEGISLATIVE HISTORY

Chapter 218 1971

Bill H (S) 314

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Feb 18 ✓C

Hearing Date(s) Jan 30 ✓C

Feb 19 ✓C

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Date Out Feb 19 ✓C

Jan 30 ✓C

Did this bill originate in an interim committee? Yes No

Committee

Report

SENATE JUDICIARY COMMITTEE MEETING--January 30, 1971

The meeting was called to order by the Chairman, Senator Gilfeather. All the members were present with the exception of Senator Sheehy and Senator Vainio.

Senate Bill 224 was brought before the committee by Senator Hafferman and discussed briefly by him. After a brief deliberation Senator Turnage MOVED THAT SENATE BILL 224 DO NOT PASS. Senator Hafferman did not vote as did the other committee members; he voted "no" and asked that it be recorded.

Senate Bill 239 was considered by the committee. Chairman Gilfeather put this bill in subcommittee of Senators Turnage, Moore and Stephens, to report back on it February 2.

Senate Bill 242 was discussed by the committee. It was decided to ask Mr. Kellner of the Department of Institutions to appear at hearing of the bill, which was set for Monday, February 1, on adjournment.

The committee discussed Senate Bill 332 and MOVED THAT SENATE BILL 332 DO NOT PASS.

Senate Bill 317 was discussed by Chairman Gilfeather, Senator Turnage and others and it was given a DO PASS.

Senate Bill 314 was explained by Senator Turnage. There was a discussion on this by Senators Gilfeather, Turnage and Rehberg. IT WAS MOVED THAT SENATE BILL 314 DO PASS.

Senate Bill 308 was read by Senator Gilfeather. He set it for hearing on February 2.

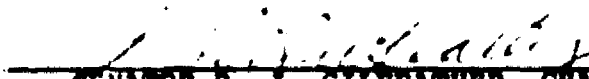
Senate Bill 307 was brought before the committee and the Chairman set it for hearing on February 2.

Senate Bill 294 was discussed by Senators Turnage, Senator Shea and others. It was set for hearing February 4.

Senate Bill 286 was presented to the committee and the Chairman set it for hearing February 3.

Senate Bill 310 was presented to the committee and the Chairman set it for hearing February 3.

There being no further business to come before the committee, the meeting was adjourned.


SENATOR P. J. GILFEATHER, CHAIRMAN

February 18, 1971

JUDICIARY COMMITTEE

The meeting was called to order in room 300 of the capitol on Thursday, February 18 at 9 a.m. with Chairman Jeffrey J. Scott presiding. All members were present.

SENATE BILL 34 Senator Thiessen gave a description of this bill which provides that the order discharging an executor or administrator must be made within 2 years. There were no further witnesses and no questions were asked.

SENATE JOINT RESOLUTION 25 Representative Dzivi gave a description of this resolution, which requests and directs the criminal law commission to submit a separate bill for each chapter of the proposed criminal code revision to be submitted to the 43rd legislative assembly. There were no further witnesses, no questions were asked and the hearing on this bill was closed.

SENATE BILL 314 Senator Gilfeather explained the contents of this bill, which provides for recording of abstracts of instruments and provides for constructive notice thereof. Senator Turnage gave a statement in support of this bill. There were no further witnesses, questions were asked and the hearing on this bill was closed.

SENATE BILL 102 Senator Lynch gave a statement describing this bill, which provides false arrest insurance for sheriffs and sheriff's departments. Mr. Don Garrity, representing the Montana Sheriff's & Peace Officers' Association, gave a statement in support. There were no further witnesses, questions were asked and the hearing on this bill was closed.

SENATE BILL 294 Senator Lynch gave a description of this bill which would shorten the period for filing mechanics' liens by providing for filing of a notice of completion. Mr. John L. Peterson, representing the Montana Saving and Loan League, gave testimony in support of this bill. Mr. Don Garrity, representing the Montana Savings and Loan League, also gave a statement in support. There were no further witnesses, questions were asked and the hearing on this bill was closed.

SENATE BILL 242 Mr. Edwin G. Kellner, Director of the Department of Institutions, gave testimony in support of this bill, which relates to recommitment of sentence of persons under the age of 21 who had been sentenced to the prison and to the commitment of such person to the

EXECUTIVE SESSION

SENATE BILL 34

Mr. Mather moved that Senate Bill 34
BE NOT CONCURRED IN. Motion carried.

SENATE JOINT RESOLUTION 25

Mr. Towe moved that Senate Joint Resolution be concurred in. Mr. Towe withdrew his motion and made a substitute motion to strike the words "and direct" and put in the words "to the extent possible". Motion carried. Mr. Parrish made a substitute motion that this bill BE NOT CONCURRED IN. Motion carried.

SENATE BILL 222

Mr. Greely moved that this bill be concurred in. Mr. Mather made a substitute motion that this bill be not concurred in. This motion failed. A vote was taken on the motion that this bill BE CONCURRED IN. Motion carried. Mr. Greely will carry this bill on second reading.

SENATE BILL 314

Mr. Towe moved that Senate Bill 314
BE CONCURRED IN. Motion carried. Mr. Towe will carry this bill on second reading.

SENATE BILL 102

Mr. Parrish moved that this bill be not concurred in. Mr. Scott made a substitute motion that Senate Bill 102 be concurred in. This motion failed. A vote was taken on the motion that this bill BE NOT CONCURRED IN. Motion carried.

SENATE BILL 294

Mr. Greely moved that this bill be passed for the day. Motion carried.

SENATE BILL 242

Mr. Parrish moved to amend the bill on page 2, lines 14 to 18 by striking all the underlined material. Mr. Greely moved that on page 2, line 9, after the word "wherein" the material "or upon an application of a person" be inserted. There was some discussion and Mr. Greely made a substitute motion that this bill be passed for the day. Motion carried.

SENATE BILL 189

Mr. Greely moved that this bill BE CONCURRED IN. Motion carried. Mr. Greely was assigned to carry this bill in the House.

SENATE BILL 119

Mr. Towe moved that this bill BE CONCURRED IN. Motion carried.

SENATE BILL 308

Mr. Bennett moved that Senate Bill 308
BE NOT CONCURRED IN. Motion carried.

SENATE BILL 60

Mr. McNamer moved that Senate Bill 60
BE NOT CONCURRED IN. Motion failed.
A motion was made that Senate Bill 60 BE CONCURRED IN. Motion carried. Mr. Baeth was assigned to carry this bill in the House.

CHAPTER NO. 217.

An Act to Amend Section 91-403, R.C.M., 1947, Relating to Succession To and Distribution of Estates.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 91-403, R.C.M., 1947, is amended to read as follows:

Disposition of estate of intestate.

"91-403. **Succession to and distribution of estates.** When any person having title to any estate not limited by marriage contract dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided by the laws of Montana, subject to the payment of his debts, in the following manner:

Surviving husband or wife and children.

1. If the decedent leaves a surviving husband or wife, only one (1) child, or the lawful issue of one (1) child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one (1) child living, or one (1) child living, and the lawful issue of one (1) or more deceased children, one third (1/3) to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such issue consists of more than one (1) child living, or one (1) child living, and the lawful issue of one (1) or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

Lineal descendants.

Issue.

Surviving husband or wife.

Father and mother.

2. If the decedent leaves no issue, the whole of the estate shall go to the surviving husband or wife. If the decedent leaves no issue, nor husband or wife, the estate must go to the father and mother in equal shares, or if either be dead then to the other.

3. If there be neither issue, husband, wife, father, nor

mother, then in equal shares to the brothers and sisters of the decedent, and to the children or grandchildren of any deceased brother or sister, by right of representation.

Brothers and sisters, their children or grandchildren.

4. If the decedent leaves neither issue, husband, wife, father, mother, brother, nor sister, the estate goes to the next of kin, in equal degree, excepting that where there are two (2) or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote.

Next of kin.

5. If the decedent leaves several children, or one (1) child, and the issue of one (1) or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

Share of deceased minor, unmarried child.

6. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

Issue of children.

7. If the decedent leaves no husband, wife, or kindred, the estate escheats to the state."

Escheat to state.

Approved March 4, 1971.

CHAPTER NO. 218.

An Act to Provide for Recording of Abstracts of Instruments and Providing for Constructive Notice Thereof; Amending Section 16-2902, 73-107, 73-114, 73-115, 73-116, R.C.M., 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 16-2902, R.C.M., 1947, is amended to read as follows:

Amending clause.

County clerk must
record instruments
on payment of fees.

"16-2902. **What to be recorded.** He must, upon payment of his fees for the same, record, or photograph, or correctly copy, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by photographic process, or by the use of prepared blank forms:

1. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved, *and abstracts of such instruments which have been acknowledged or proved;*

2. Certificates of births and deaths;

3. Wills devising real estate admitted to probate;

4. Official bonds;

5. Transcripts of judgments which by law are made liens upon real estate;

6. Instruments describing or relating to the separate property of married women, and sole trader judgments;

7. All orders and decrees made by the district court in probate matters affecting real estate which are required to be recorded;

8. Notice of pre-emption claims;

9. Notice and declaration of water rights;

10. Assignments for the benefit of creditors;

11. Affidavits of annual work done on mining claims;

12. Notices of mining locations and declaratory statement;

13. Estrays and lost property;

14. A book containing appraisement of state lands;

15. Such other writings as are required or permitted by law to be recorded; provided, nothing herein shall be construed as preventing the recording or photographing or copying of such instruments, separately, upon a single or loose page or pages of a book, if such page or pages shall immediately become a part of such book or volume, which, when completed, shall be firmly bound and the pages thereof securely locked or sealed into the volume.

Whenever the laws of the state of Montana require or permit any instrument to be recorded, such recording may be made in the manner or by any of the processes herein-before prescribed."

Section 2. **Instruments to include abstracts.** For the purposes of title 73, chapter 1 and title 39, chapter 1 the word instrument shall include an abstract of an instrument which contains:

Instruments defined
to include abstracts.

(a) The names and addresses of the parties thereto.

(b) A description of the real property affected.

(c) A statement that this is an abstract of another document.

(d) A short statement of the effect of the document abstracted.

(e) The name and address of the person who will provide a full and complete copy of the document abstracted, without cost, upon request of any person.

(f) And shall be executed and acknowledged or proved by all parties executing the abstracted document.

Section 3. An abstract of a conveyance or encumbrance of real property, which abstract is acknowledged or proved, and certified and recorded as prescribed by law, shall have the same effect for all purposes of title 73, chapter 2 as if the conveyance or encumbrance of real property had been acknowledged or proved, and certified and recorded as prescribed by law.

Effect of recorded
abstract.

Section 4. Section 73-107, R.C.M., 1947, is amended to read as follows:

Amending clause.

"73-107. **Transfers in trust, etc.** Transfers of property in trust for the benefit of creditors, and transfers or liens on property by way of mortgage or abstract of such document are required to be recorded in the cases specified in the chapters on the special relation of debtor and creditor, and the chapter on mortgages, respectively."

Transfer in trust
and liens, or
abstracts thereof.

Section 5. Section 73-114, R.C.M., 1947, is amended to read as follows:

Amending clause.

"73-114. **Oil, gas and mineral leases, release of record of.** When any oil, gas, or other mineral lease heretofore or hereafter executed shall become forfeited, it shall be

Duty to release
forfeited oil, gas
and mineral leases.

the duty of the lessee, his successor or assigns, within sixty days from the date this act shall take effect, if the forfeiture occurred prior thereto, and within sixty days from the date of the forfeiture of any and all leases, to have such lease or *abstract of such lease* released from record in the county where the leased land is situated without cost to the owner thereof."

Amending clause. Section 6. Section 73-115, R.C.M., 1947, is amended to read as follows:

"73-115. Action to compel release—damages—attorney's fees—release without suit. Should the owner of such lease neglect or refuse to execute a release as provided by this act, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and he may also recover in such action of the lessee, his successor or assigns, the sum of one hundred dollars (\$100.00) as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and he may also recover any additional damages that the evidence in the case will warrant. In all such actions writs of attachment may issue as in other cases. If, in such action, the plaintiff fails to establish the forfeiture of the lease, an attorney's fee must be allowed to the holder of the lease. Issues in regard to such fees shall be determined in the same manner as other issues in such actions.

Additional remedy. When, by its terms, any such oil and/or gas lease has expired and is subject to forfeiture for nonperformance and more than three (3) years has elapsed since said expiration, the owner of the leased premises may, in addition to all other remedies, serve a written notice on said lessee or on the assignee thereof, which notice shall state the name of the lessor, the lessee, and the assignee thereof if assigned; the date of the lease, the date of the expiration thereof; description of the lands leased; the place, book and page where recorded; and shall state that unless said lease or *abstract of such lease* is released of record, or the lessee or the assignee thereof shall, within sixty (60) days from the date of service thereof, file an affidavit in the county clerk's office in the county wherein such lease or *abstract of such lease* is recorded and deliver a copy thereof to the owner of the leased lands stating that said lease is in effect, otherwise, said lease shall be terminated and of

no effect and shall cease to be a lien upon the lands described therein.

If the lessee of the assignee thereof resides in the county where said lease or *abstract of such lease* is recorded, the notice shall be personally served on said person or persons. If said lessee or the assignee thereof does not reside in said county, but his, her or its address appears on the records in that county clerk's office, or is otherwise known, such notice shall be mailed by registered mail to such person, or persons, at such address, and in addition thereto, such notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county in which said lands are situated, and said notice shall likewise be published in the manner as above provided if the address of the lessee or assignee is unknown. The date of service of said notice, if served personally; the date of mailing, if served by mail; and the first date of publication of said notice, if published, must be at least sixty (60) days before the date of termination referred to in said notice. Upon the expiration of the time mentioned in said notice, if the affidavit of the lessee or assignee has not been filed as herein provided, the owner of the leased lands shall file an affidavit or service thereof in the county clerk's office of said county and the affidavit shall be kept as a permanent file in his office, and such proof of notice when so filed shall be prima-facie evidence of the sufficiency of the notice, and from and after the filing thereof said lease shall be terminated and the lands released from the lien thereof."

Section 7. Section 73-116, R.C.M., 1947, is amended to read as follows:

"73-116. Demand for release—when and upon whom to be made. At least twenty days before bringing the action provided for in this act, the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder of the lease (if such demand by ordinary diligence can be made in this state) that said lease or *abstract of such lease* be released of record. Such demand must be written. When written, a letterpress or carbon or written copy thereof, when shown to be such, may be used as evidence in any court with the same force and effect as the original."

Approved March 4, 1971.

Personal service.

Registered mail.

Publication.

Affidavit of service filed.

Prima facie evidence.

Termination.

Amending clause.

Demand for release of record.

Evidence.